TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~209~~ 474 ~~211~~ 19

PETER MUGLER, PLAINTIFF IN ERROR,

vs.

THE STATE OF KANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

FILED NOVEMBER 16, 1883.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 790.

PETER MUGLER, PLAINTIFF IN ERROR,

vs.

THE STATE OF KANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 UNITED STATES OF AMERICA, } ss:
State of Kansas, }

To the Hon. A. H. Horton, chief justice of the supreme court of the State of Kansas:

Your petitioner, Peter Mugler, a citizen of Kansas, would respectfully represent that at the January term, 1883, of the said supreme court of the State of Kansas, in the suit of The State of Kansas *vs.* Peter Mugler, this petitioner, judgment was rendered against the defendant, and that this judgment is rendered by the court of final appellate jurisdiction within and for said State.

Your petitioner farther states that the proceedings in said suit so had involve the validity of a constitutional enactment of the said State of Kansas, and of a statute of said State, the defendant claiming that said constitutional enactment and statute are in violation of the Constitution of the United States, and the judgment of said supreme court of the State of Kansas was in favor of the validity of said enactment and statute, as appears by the certified record of said supreme court herewith exhibited.

Your petitioner prays that upon inspection of the record he be granted a writ of error to the Supreme Court of the United States in said cause, in order that the error, if any, in the proceedings and judgment of said supreme court of Kansas may be corrected.

GARVES & BOND,
G. G. VEST,
For Mugler.

[Endorsed:] Filed Apr. 12, 1883. C. J. Brown, clerk sup. court.

2 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the chief justice and associate justices of the supreme court of the State of Kansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said supreme court of the State of Kansas, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had, in the said suit between The State of Kansas, plaintiff, and Peter Mugler, defendant, wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of such their validity; and wherein was drawn in question the construction of a clause of the Constitution of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, a manifest error hath happened to the great damage of the said Peter Mugler, defendant, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that

then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the
3 said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 11th day of April, in the year of our Lord one thousand eight hundred and eighty-three.

Issued at office in the city of Topeka, with the seal of the circuit court of the United States for the district of Kansas, dated as aforesaid.

[SEAL.] A. S. THOMAS,
Clerk of the Circuit Court of the United States for the District of Kansas.

Approved, this 11th day of April, 1883.

ALBERT H. HORTON,
Chief Justice of the Supreme Court of the State of Kansas.

[Endorsed:] Peter Mugler, plaintiff in error, *vs.* State of Kansas, defendant in error. Writ of error. Filed Apr. 12, 1883. C. J. Brown, clerk sup. court.

4 The United States of America to the State of Kansas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Kansas, wherein Peter Mugler is plaintiff in error and The State of Kansas is defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Albert H. Horton, chief justice of the supreme court of the State of Kansas, this 11th day of April, 1883.

ALBERT H. HORTON.

5 TOPEKA, KANSAS.

Service of the within citation upon the undersigned is hereby acknowledged, this the 24th day of April, A. D. 1883.

G. W. GLICK,
Governor of the State of Kansas.

W. A. JOHNSTON,
Attorney General.

[Endorsed:] Peter Mugler, plaintiff in error, *vs.* State of Kansas, defendant in error. Citation. Filed Apr. 12, 1883. C. J. Brown, clerk sup. court.

6 Know all men by these presents, that we, C. C. Burnes, S. C. King, and H. Clay Park, are held and firmly bound unto the State of Kansas in the full and just sum of two hundred dollars, to be paid to the said State of Kansas; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 11th day of April, 1883.

Whereas lately, at the January, 1883, term of the supreme court of the State of Kansas, in a suit depending in said court between The State of Kansas, plaintiff, and Peter Mugler, defendant, judgment and decision was rendered against the said Peter Mugler; and the said Peter Mugler having obtained a writ of error to the Supreme Court of the United States, and filed a copy thereof in the clerk's office of said court to reverse the decision and judgment in the aforesaid suit, and a citation directed to the said State of Kansas, citing and admonishing — to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said Peter Mugler shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and effect.

C. C. BURNES. [SEAL.]
S. C. KING. [SEAL.]
H. CLAY PARK. [SEAL.]

Approved, this April 11th, 1883.

ALBERT H. HORTON,
Chief Justice of the Supreme Court of the State of Kansas.

[Endorsed:] Bond. Filed Apr. 12, 1883. C. J. Brown, clerk sup. court.

7 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS, Plaintiff,
vs.
PETER MUGLER, Defendant. } 2622.

Be it remembered that on the thirty-first day of May, A. D. 1882, there was filed in the office of the clerk of the supreme court of the State of Kansas a certified copy of the pleadings and record in said cause from the district court of the county of Saline, which is in words and figures as follows, to wit:

8 STATE OF KAS., } ss:
Saline Co.,

In the District Court of said County.

STATE OF KANSAS, Plaintiff, *vs.* PETER MUGLER, Defendant.

Be it remembered that in the above-entitled action, and on the 29th day of November, A. D. 1881, there was filed in said court an indictment in the following words and figures, to wit:

Indictment.

STATE OF KANSAS, } ss:
County of Saline, }

In the District Court of Saline County, State aforesaid.

STATE OF KANSAS, Plaintiff, *vs.* PETER MUGLER, Defendant.

First count: The jurors of the grand jury selected, impanelled, and sworn, in and for the body of said county, charged to inquire of offenses committed within the said county of Saline, in the name, by the authority, and on behalf of the State of Kansas, do, upon their solemn oaths, find and present that one Peter Mugler, late of the county of Saline and State of Kansas, and within the jurisdiction of this court, on, to wit, the 10th day of November, A. D. 1881, in the county of Saline, in the State of Kansas, did unlawfully, in a certain building situate and being upon lots number 152 and 154 on Third (3d) street, in the city of Salina, in the county and State aforesaid, commonly known as "Mugler's Brewery," sell, barter, and give away certain spirituous, malt, vinous, fermented, and other intoxicating liquors. He, the said Peter Mugler, not then and there having taken out and having a permit to sell intoxicating liquors as provided by law, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Kansas.

H. S. CUNNINGHAM,
County Attorney.

2d count: And the jurors aforesaid, selected, impanelled, sworn, and charged as aforesaid, by the authority aforesaid, and upon their oaths aforesaid, do further find and present that the said Peter Mugler, late of said county and State, on, to wit, the 15th day of November, A. D. 1881, in the county of Saline aforesaid, in a certain building situated and being on lots number 152 and 154 on Third street, in the city of Salina, commonly known as Mugler's Brewery, and in said county and State, unlawfully did sell, barter, and give away spirituous, malt, vinous, fermented, and other intoxicating liquors, the said Peter Mugler then and there not having a permit to sell intoxicating liquors, as provided by law, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Kansas.

H. S. CUNNINGHAM,
County Attorney.

3d count: And the jurors aforesaid, selected, impanelled, sworn, and charged as aforesaid, by the authority aforesaid, and upon their oaths aforesaid, do further find and present that the said Peter Mugler, late of said county and State, on, to wit, the 20th day of November, A. D. 1881, in the county of Saline aforesaid, in a certain building situated and being on lots Nos. 152 and 154 on Third street, in the city of Salina, commonly known as Mugler's Brewery, and in said county and State, unlawfully did sell, barter, and give away spirituous, malt, vinous, fermented, and other intoxicating

liquors, the said Peter Mugler then and there not having a
9 permit to sell intoxicating liquors, as provided by law, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Kansas.

H. S. CUNNINGHAM,
County Attorney.

4th count: And the jurors aforesaid, selected, impanelled, sworn, and charged as aforesaid, by the authority aforesaid, and upon their oaths aforesaid, do further find and present that the said Peter Mugler, late of said county and State, on, to wit, the 21st day of November, A. D. 1881, in the county of Saline aforesaid, in a certain building situated and being on lots Nos. 152 and 154 Third street, in the city of Salina, commonly known as "Mugler's Brewery," and in said county and State, unlawfully did sell, barter, and give away spirituous, malt, vinous, fermented and other intoxicating liquors, the said Peter Mugler then and there not having a permit to sell intoxicating liquors, as provided by law, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Kansas.

H. S. CUNNINGHAM,
County Attorney.

5th count: And the jurors aforesaid, selected, impanelled, sworn, and charged as aforesaid, by the authority aforesaid, and upon their oaths aforesaid, do further find and present that the said Peter Mugler, late of said county and State, on, to wit, the 23rd day of November, A. D. 1881, in the county of Saline aforesaid, in a certain building situated and being on lots Nos. 152 and 154 on Third street, in the city of Salina, commonly known as Mugler's Brewery, and in said county and State, unlawfully did sell, barter, and give away spirituous, malt, vinous, fermented, and other intoxicating liquors, the said Peter Mugler then and there not having a permit to sell intoxicating liquors, as provided by law, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Kansas.

H. S. CUNNINGHAM,
County Attorney.

Indictment.

STATE OF KANSAS, }
County of Saline, } *ss:*

In the District Court of Saline County, State aforesaid.

STATE OF KANSAS, Plaintiff, *vs.* PETER MUGLER, Defendant.

Sixth count: The jurors aforesaid, selected, impanelled, and sworn as aforesaid, charged to inquire of offenses committed within the said county of Saline, in the name and by the authority and on behalf of the State of Kansas, do upon their solemn oaths find and present that the said Peter Mugler, late of the county of Saline and State of

Kansas, and within the jurisdiction of this court, on, to wit, the 1st day of November, A. D. 1881, and on divers other days and times between said date and the time of the finding of this indictment, in the county of Saline and State of Kansas, did unlawfully keep and maintain a certain common nuisance, to wit, a certain tenement in said county situated and being upon lots number 152 and 154 on Third street, in the city of Salina, in the county and State aforesaid, commonly known as Mugler's Brewery, then and on said other days and times there by him the said Peter Mugler kept and used for the illegal selling, bartering, and giving away and illegal keeping for sale, barter, and use of intoxicating liquors in violation of the provisions of an act entitled An act to prohibit the manufacture and sale of intoxicating liquors, except for medical, scientific, and mechanical purposes, and to regulate the manufacture and sale thereof for such excepted purposes, approved February 19, 1881, he, the said Peter Mugler, not then and there having a permit to sell intoxicating liquors as provided by law, to the common nuisance of all good citizens of the State of Kansas, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Kansas.

H. S. CUNNINGHAM,
County Attorney.

(Endorsed:) State of Kansas, pl'ff, *vs.* Peter Mugler, defendant. Indictment. A true bill. T. J. Going, foreman. Witnesses: George Mugler, Evander Light, Phil. Rineman, Gus. Schultz, Chas. Holinquist, A. J. Holinquist, J. B. Bissell, J. M. Postlewait, Chas. Low, Albert Ross, P. H. Peel. Filed 29th day of November, A. D. 1881. Joseph Moore, clerk district court. Dec., 1881. Arraignment waived and a plea of not guilty entered. Joseph Moore, clerk district court.

Motion to Quash.

In the District Court of Saline County, Kansas.

THE STATE OF KANSAS, Plaintiff,
vs.
PETER MUGLER, Defendant. } No. 290.

Comes now the said defendant, Peter Mugler, by Garver and Bond, his attorneys, and moves the court to quash the indictment filed herein for the following reasons, to wit:

1. For that separate and distinct offenses are improperly joined in said indictment.

2. For that said indictment contains counts for separate and distinct offenses which are of different natures and for which different penalties are prescribed.

GARVER AND BOND,
Attorneys for Defendant.

(Endorsed:) The State of Kansas *vs.* Peter Mugler. Motion. Filed December 5, 1881. Joseph Moore, clerk district court. Garver and Bond, attorneys for defendant.

On the 5th day of December, A. D. 1881, said defendant filed his motion to quash the sixth count of the indictment as follows:

Motion to Quash Sixth Count.

In the District Court of Saline County, Kansas.

THE STATE OF KANSAS, Plaintiff,
vs.
PETER MUGLER, Defendant. } No. 290.

Comes now the said defendant, Peter Mugler, by his attorneys, Garver and Bond, and moves the court to quash the sixth count in the indictment filed herein, for the reason that said count does not state facts sufficient to constitute a public offense.

GARVER AND BOND,
Attorneys for Defendant.

The following motion to elect upon which count the State would proceed was made and filed December 5, 1881:

Motion to Elect.

In the District Court of Saline County, Kansas.

THE STATE OF KANSAS, Plaintiff,
vs.
PETER MUGLER, Defendant. } No. 290.

Comes now the said defendant, Peter Mugler, by Garver and Bond, his attorneys, and moves the court to require the plaintiff to elect upon which count in said indictment it will proceed to trial,
11 and ask for a verdict.

GARVER AND BOND,
Attorneys for Defendant.

(Endorsed:) The State of Kansas *vs.* Peter Mugler. Motion. Filed December 5, 1881. Joseph Moore, clerk. Garver and Bond, attorneys for defendant.

Journal Entry.

In the District Court of Saline County, Kansas.

THE STATE OF KANSAS, Plaintiff,
vs.
PETER MUGLER, Defendant. } No. 290.

And now on this 5th day of December, 1881, comes the said plaintiff, by H. S Cunningham, county attorney, and J. G. Mohler, of counsel, and the said defendant in person and by Garver and Bond, his attorneys, and thereupon the said defendant presented and filed to the court his motion to quash the indictment herein, which was argued by counsel; and the court, being fully advised in the premises, overruled the same; to which ruling of the court the

defendant duly excepted. Thereupon the said defendant made a motion to quash the sixth count in the indictment filed herein; which, having been argued by counsel, was by the court overruled; to which ruling of the court the defendant duly excepted. The defendant thereupon made and presented his motion to require plaintiff to elect upon which count it would go to trial, and asks a verdict; which motion, after having been argued by counsel, was by the court overruled; to which ruling of the court the defendant duly excepted.

(Endorsed :) No. 290. The State of Kansas *vs.* Peter Mugler. Journal entry. Filed December 9, 1881. Joseph Moore, clerk district court.

On December 19th, 1881, said defendant interposed the following plea:

Plea.

In the District Court of Saline County, Kansas.

STATE OF KANSAS, Plaintiff,
vs.
PETER MUGLER, Defendant. } No. 290.

And now comes the defendant, Peter Mugler, and for plea to the indictment in this cause says: That prior to and since the year 1876 he was, and now is, a citizen of the United States and of the State of Kansas. That in the year 1877 he erected and furnished a brewery on the lots described in said indictment, in the city of Salina, Saline county, Kansas, at an actual outlay and expense of ten thousand dollars ($10,000), and that he has been since that time, and now is, the owner thereof. That said property was specially constructed and adapted for use as a brewery, and, being so specially constructed and adapted, the same is nearly valueless for any other purpose, and that while said brewery is worth the sum of ten thousand dollars ($10,000) for the purposes for which it was constructed, it is worth not to exceed three thousand dollars ($3,000) for any other purpose. Said defendant further alleges that whatever liquors were sold or given away by him, as charged in said indictment, were liquors manufactured at and in due course of the business of said brewery, and were included and disposed of in the original packages.

Wherefore the said defendant says that the act under which this prosecution is instituted, so far as it affects him in the use of such property for the purposes for which it was and is adapted, without compensation for any damage done thereto, is unconstitu-
12 tional, null, and void.

GARVER AND BOND,
Attorneys for Defendant.

The journal entry of the proceedings had upon the trial of said case, and the judgment was entered as follows, on January 4, 1882:

Journal Entry. Trial and Judgment.

STATE OF KANSAS, Plaintiff,
vs.
PETER MUGLER, Defendant. } No. 290.

On this day, this cause coming on for trial, the State appeared by H. S. Cunningham, Esq., county attorney, and J. G. Mohler, Esq., counsel, and the defendant in person, as well as by Garver and Bond, his attorneys, and thereupon the defendant pleaded not guilty; and a trial by jury being waived, the issues herein raised by the indictment, and defendant's plea of not guilty thereto, are submitted for trial to the court upon an agreed statement of facts; and after argument by counsel, and due consideration by the court, the court determines the said issues in favor of the State, and finds the defendant guilty in manner and form as charged in the first count in the indictment herein.

Said defendant thereupon, and before judgment, made and filed his written motion for a new trial, which was argued by counsel, and by the court overruled; to which ruling said defendant duly excepted at the time. Said defendant thereupon made and filed his written motion in arrest of judgment, which was argued by counsel, and by the court overruled; to which ruling said defendant duly excepted at the time. Said defendant having no further cause to show why judgment should not be pronounced, it is ordered and adjudged by the court that said defendant do pay a fine of one hundred dollars, and the costs herein taxed at $——, and that he be committed to the county jail until the same are paid.

And now upon the rendering of said judgment, and at the same term, said defendant presents his certain bill of exceptions taken on the trial of this cause, and the same is allowed and signed and ordered to be placed on file with the records in this case, and made a part thereof.

On application of said defendant it is further ordered by the court that on appeal of this case to the Supreme Court, a stay of the execution of this judgment may be had by the execution by said defendant of an undertaking in the sum of two hundred dollars, with one or more sureties, to be approved by the clerk of this court, conditioned for his appearance in this court upon the return of a mandate of the Supreme Court affirming this judgment, then and there to abide by the same.

Motion for new trial was made December 26, 1881, in words as follows:

Motion for New Trial.

In the District Court of Saline County, Kansas.

STATE OF KANSAS, Plaintiff,
vs.
PETER MUGLER, Defendant. } No. 290.

Comes now said defendant and moves the court to grant a new trial herein for the following reasons:

1. The decision of the court is contrary to the evidence.
2. The decision of the court is contrary to law.

GARVER AND BOND,
Attorneys for Defendant.

Motion in arrest of judgment was made Dec. 26, 1881, as follows:

Motion in Arrest of Judgment.

In the District Court of Saline County, Kansas.

13 STATE OF KANSAS, Plaintiff, *vs.* PETER MUGLER, Defendant.

Comes now said defendant and moves the court to arrest judgment herein upon the finding of guilty for the following reasons:

1. That the facts stated in the indictment do not constitute a public offense.
2. That the facts as set forth in the agreed statement upon which said findings is based do not constitute a public offense.

GARVER AND BOND,
Attorneys for Defendant.

On the 26th day of December, 1881, the following bill of exceptions was made and filed among the records of said case:

Bill of Exceptions.

In the District Court of Saline County, Kansas.

STATE OF KANSAS, Plaintiff,
vs.
PETER MUGLER, Defendant. } No. 290.

Be it remembered that upon the trial of this action the same was submitted to the court upon an agreed statement of facts, no other evidence being offered or introduced, said agreed statement being in words and figures as follows:

STATE OF KANSAS, *Saline County:*

In District Court.

STATE OF KANSAS, Plaintiff,
vs.
PETER MUGLER, Defendant. } No. 290.

It is hereby stipulated and agreed that the facts in the above-entitled case are, and that the evidence would prove them to be, as follows:

That the defendant, Peter Mugler, has been a resident of the State of Kansas continually since the year 1872; that, being foreign born, he in that year declared his intention to become a citizen of the United States, and always since that time intending to become such citizen, he did, in the month of June, 1881, by the judgment of the district court of Wyandotte county, Kansas, become a full citizen of

the United States, and since that time has been a citizen of the United States and of the State of Kansas.

That in the year 1877 said defendant erected and furnished a brewery on lots Nos. 152 and 154 on Third street, in the city of Salina, Saline county, Kansas, for use in the manufacture of a malt liquor commonly known as beer; that such building was specially constructed and adapted for the manufacture of such malt liquor, at an actual cost and expense to said defendant of ten thousand dollars, and was used by him for the purposes for which it was designed and intended after its completion in 1877 and up to May 1, 1881.

That of the beer so manufactured and on hand prior to February 19, 1881, said defendant made one sale since May 1, 1881, which is the sale charged in the first count of the indictment, said sale being made on the above-described premises; that the beer so sold was in the original packages in which it was placed after its manufacture, and was not sold for use nor used on said premises, and that at the time of such sale said defendant had no permit to sell intoxicating liquors, as provided by chapter 128 of Laws of 1881.

And the foregoing was all the evidence introduced in this case and upon which a finding of guilty was made; and now on
14 this 26th day of December, A. D. 1881, being the same term of court at which this case was tried, said defendant presents this his bill of exceptions, and the same is settled and signed as a true and correct bill of exceptions herein, and it is ordered that it be filed as a part of the record in this case.

JOHN H. PRESCOTT, *Judge.*

STATE OF KANSAS, } ss:
Saline County, }

I, Joseph Moore, clerk of the district court of Saline county, Kansas, do hereby certify that the above and foregoing are, respectively, full, true, and correct copies of the indictment, motions to quash, motion to require State to elect, journal entry of the rulings of the court thereon, plea, journal entry of trial and judgment, motion for new trial, motion in arrest of judgment, and bill of exceptions, and that the same is a full and correct copy of the record in said case and of all proceedings had therein (except the warrant and subpœnaes). I further certify that the notices hereto attached are the notices of appeal herein served by said defendant on me and on the county attorney of my said county on the 5th day of May, A. D. 1882.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 5th day of May, A. D. 1882,

[SEAL.] JOSEPH MOORE,
Clerk District Court.

Filed May 31, 1882. C. J. BROWN,
Clerk Supreme Court.

15 And also, on, to wit, the thirty-first day of May, A. D. 1882, there was filed in the office of the clerk of the supreme court of the State of Kansas notice of appeal from the district court of

Saline county, Kansas, to the supreme court of the State of Kansas, in the above cause, which is in words and figures as follows, to wit:

16 STATE OF KANSAS, } ss:
Saline County, }

In the District Court of said County.

STATE OF KANSAS, Plaintiff, }
vs. } No. 289. [290.]
PETER MUGLER, Defendant. }

To Joseph Moore, clerk of the district court, and H. S. Cunningham, county attorney of Saline County, Kansas:

You and each of you are hereby notified that the above-named defendant, Peter Mugler, appeals from the judgment entered in the above-entitled case, for the purpose of having the same reviewed in the Supreme Court.

GARVER AND BOND,
Attorneys for Peter Mugler.

We acknowledge service of above notice, this 5th day of May, A. D. 1882.

JOSEPH MOORE, *Clerk.*
H. S. CUNNINGHAM,
County Attorney, Saline County, Kansas.

Filed May 31, 1882.

C. J. BROWN,
Clerk Supreme Court.

17 And afterwards, on, to wit, the eighth day of November, A. D. 1882, the same being one of the regular judicial days of the July term, A. D. 1882, of the supreme court of the State [of] Kansas, before said court in session at the supreme court-room in the city of Topeka—present, Honorable Albert H. Horton, chief justice, Honorable Daniel M. Valentine and Honorable David J. Brewer, associate justices, and C. J. Brown, clerk of said court—the following proceeding, among others, was had and entered of record on page two hundred and eighty-nine of journal "I," as follows, to wit:

THE STATE OF KANSAS, Appellee, *vs.* PETER MUGLER, Appellant.

This cause came on to be heard on notices of appeal and transcript of the record of the district court of Saline county, and was submitted on brief of counsel for appellant, and taken under advisement by the court. Counsel for appellee was allowed twenty days to file brief.

18 And afterwards, on, to wit, the fourth day of January, A. D. 1883, the same being one of the regular judicial days of the January term, A. D. 1883, of the supreme court of the State of Kansas, before said court in session at the supreme court-room, in the city of Topeka—present, Honorable Albert H. Horton, chief

justice, Honorable Daniel M. Valentine and Honorable David J. Brewer, associate justices, and C. J. Brown, clerk of said court—the following proceeding, among others, was had, and entered of record on page three hundred and sixty-seven of journal "I" as follows, to wit:

THE STATE OF KANSAS, Appellee, *vs.* PETER MUGLER, Appellant.

This cause came on for decision; and thereupon it is ordered and adjudged that the judgment of the court below be affirmed, with costs, and hereof let execution issue.

Valentine, J., delivered the opinion of the court. Horton, C. J., concurring. Brewer, J., concurring specially.

19 And also, on, to wit, the fourth day of January, A. D. 1883, the same being one of the regular judicial days of the January term, A. D. 1883, of the supreme court of the State of Kansas, there was filed in the office of the clerk of the said court the syllabus and opinion of the court in said cause, a copy of which is hereunto annexed and which are in words and figures as follows, to wit:

20 *Syllabus.*

THE STATE OF KANSAS *vs.* PETER MUGLER. } No. 2622.

Appeal from Saline county. Affirmed.

THE STATE OF KANSAS *vs.* PETER MUGLER. } No. 2623.

Appeal from Saline county. Affirmed.

By the court, VALENTINE, J.:

In 1877 the defendant erected a brewery, and has since operated the same in manufacturing beer, an intoxicating liquor. In 1881, after the taking effect of both the constitutional amendment relating to intoxicating liquors and the present prohibitory liquor act—Laws of 1881, chap. 128—the defendant manufactured beer, and also sold beer, without any permit giving him authority to do either. The sale, however, was of beer which he had manufactured prior to the taking effect of the said prohibition act. Held, that the said prohibition act is not unconstitutional; but that it is constitutional and valid so far as it affects the defendant, and that the defendant committed a public offense both in the manufacture of the beer, which he manufactured after the taking effect of the prohibitory act, and in the sale of the beer, which he sold after the taking effect of such act.

Horton, C. J., concurring. Brewer, J., concurring specially.

A true copy.

[SEAL.] Attest: C. J. BROWN, *Clerk Supreme Court.*

21 THE STATE OF KANSAS
vs.
PETER MUGLER. } No. 2622.

THE STATE OF KANSAS
vs.
PETER MUGLER. } No. 2623.

The opinion of the court was delivered by VALENTINE, J.

The defendant, Peter Mugler, was prosecuted criminally, in two different cases, for violations of the prohibitory liquor law. In the first case the indictment contained but one count, charging that the defendant "did unlawfully manufacture, and aid, assist, and abet in the manufacture," of certain intoxicating liquors. In the second case the indictment contained six counts; in the first five of which it charged that the defendant, on five different days, sold intoxicating liquors in violation of law; and in the sixth count it charged that the defendant was guilty of keeping and maintaining a common nuisance, by keeping for sale, and selling, certain intoxicating liquors. In the first case a motion was made by the defendant to quash the indictment, for the reason that it did not state facts sufficient to constitute any offense, and because it contained a double charge against the defendant. This motion was overruled by the court. A trial was then had in the case, before the court without a jury, upon an agreed statement of facts, which admitted that the defendant, since October 1, 1881, without a permit, manufactured beer, an intoxicating liquor, in a brewery erected by him in Salina, Kansas, in 1877, and used thereafter by him as a brewery up to May 1, 1881, the time when the present prohibitory liquor law went into effect; "that said brewery was at all times after its completion, and on May 1, 1881, worth the sum of $10,000 for use in the manufacture of said beer, and is not worth to exceed the sum of $2,500 for any other purpose." It was also admitted that the defendant
22 used his brewery for the manufacture of beer after October 1, 1881, the same as he had done prior to May 1, 1881. In the second case motions to quash the indictment and to compel the prosecution to elect upon which count it would proceed were made by the defendant and were overruled by the court. A trial was then had in the second case, before the court without a jury, upon an agreed statement of facts, which admitted that the sale charged in the first count of the indictment was made by the defendant without a permit, and that it was a sale of beer manufactured by the defendant before the passage of the prohibitory act of 1881; but whether the beer thus sold was manufactured before the adoption of the constitutional amendment, in November, 1880, prohibiting the manufacture and sale of intoxicating liquors, except for medical, scientific, and mechanical purposes, the record is silent; and for what purpose the beer was sold the record is also silent. In each of these two cases the defendant was found guilty and fined $100, and in each he now appeals to this court.

The principal question supposed te be involved in these two cases

is as follows: Is, or is not, the present prohibitory liquor law constitutional, so far as it affects the defendant and his business in manufacturing beer at his brewery and selling the same? The defendant claims that such law is unconstitutional, and his counsel make a very able and elaborate argument in this court to show that it is unconstitutional. Among other things they say:

"Years prior to the enactment of the law, and even before the prohibition amendment to the constitution was discussed, the defendant erected his brewery and furnished it with the means necessary for the manufacture of beer, the subject of the charge in the indictment. When the amendment was adopted, and when the act for its enforcement became a law, the defendant's money was thus invested, and his brewery was his 'property.' The effect of the act is to close the doors of his business and leave what had been valuable property, recognized and protected by the law, lifeless, unremunerative, and almost worthless, as it idly rests under the con-
23 demnation of the new departure. By a simply legislative edict the defendant is stripped of $7,500 in value of property as effectually as if consumed by fire.

"In this he is deprived of property without due process of law, in violation of fundamental principles of government, and of the fourteenth article of amendment to the Constitution of the United States, which provides: 'Nor shall any State deprive any person of life, liberty, or property without due process of law.'

* * * * * * *

"The defendant is deprived of his property by mere force of the Legislature decree. No rule is established, or course prescribed, by which his rights are in any way to be considered. The Legislature finds him in the enjoyment of property which public policy in this State has never been subjected to any police regulation, nor placed in any way under the surveillance of the law. It simply says to him, This business which you have built up under the protection of the law, and which to this time has not been held to infringe upon public rights in any way, is henceforth condemned as a nuisance, and the value of your property confiscated for the public good. There is no notice, no hearing, no opportunity for redress; nothing is heard but this inexorable decree of annihilation, and the defendant sits in the midst of the ruins of that which years of toil had accumulated, under the vain hope that he had security under the law."

Much that counsel say we think has force. The Legislature has probably gone a long way in destroying the values of such kinds of property as the defendant owned, and has possibly gone to the utmost verge of constitutional authority. And yet we do not think that the result reached by counsel for the defendant necessarily follows from the facts and circumstances of this case. The defendant is certainly not deprived of his brewery, or of his liquor, or of any of his other tangible property. So far as the constitutional amendment and the prohibition act are concerned he still retains his brewery and his liquors, and all his other tangible property, just the same as he did prior to the passage or adoption of any of the present restrictive or

prohibitory liquor laws. But probably it is not his tangible property which he claims has thus been taken, or destroyed, or confiscated. It is his intangible property, his vested rights, founded upon or incidental to the rightful enjoyment or use of his visible and tangible property of which he claims to have been deprived. This brings us to a comparison between the former restrictive and pro-
24 hibitory liquor laws of this State and the present restrictive and prohibitory liquor laws. In 1877, when the defendant erected his brewery, he had a right to manufacture all the beer or other intoxicating liquors which he chose, and he can do so still, provided he first obtains a permit therefor from the probate judge, and he can easily obtain the permit by complying with the terms and conditions upon which permits are issued. At that time he could manufacture intoxicating liquors for any purpose which he chose; but since the adoption of the constitutional amendment, in November, 1880, he can manufacture such liquors only for medical, scientific, and mechanical purposes. His right to sell intoxicating liquors, however, was always restricted. In 1877, under the then existing laws, he had no right to sell his beer or any other intoxicating liquor in any quantity or in any place in Kansas, or to any person, unless he had first obtained a license therefor. The State *v.* Volmer, 6 Kas., 371; Dolson *v.* Hope, 7 Kas., 161; Alexander *v.* O'Donnell, 12 Kas., 608; and such is still the law. The license is now called a "permit," but even with a license the defendant had no right under the old laws to sell his beer on Sundays, or on election days, or on the Fourths of July, or to any person who was in the habit of becoming intoxicated, against the known wishes of his wife, child, parent, brother, or sister; or to any minor, against the consent of his parent or guardian; or at any place except the place designated in his license, which in the present case would have been the city of Salina. Besides, the defendant had no assurance, under the old laws, that he could procure a license. Licenses were not granted to anybody and everybody, but only to a select few, and then the license would continue in force for the period of one year only, and no person could have any assurance that his license would be renewed. Both the issuing and the renewal of licenses
25 depended entirely upon the temper and disposition of the community in which the application was made. Under the old laws each community was given the privilege of determining for itself whether licenses to sell intoxicating liquors should be issued or not; and if none were issued, then the old law was as much a prohibition law as the present liquor law. The old law might properly be called not only a license law, but also an option law, and a contingent prohibition law; for licenses were allowed to be issued at the option of each community; and if they were not issued, the law would become a virtual prohibition law. Under the old law the entire State might have become a complete prohibition State at the option of its several communities, or each community might have authorized the issue of licenses as it chose. In this respect the old law and the present law differ. The old law left the question of prohibition or license with each community separately

and exclusively, while the present law theoretically enforces prohibition upon all communities, whether they are willing or unwilling. We do not here wish to be understood as saying that our present liquor law, or any liquor law which we have ever had in Kansas, is, or has been, an absolute and unqualified prohibitory liquor law. They have none of them been more than limited and qualified prohibition laws. Under the old law the defendant, with a license, could sell his beer to any person and to all persons, with the exceptions heretofore mentioned; but under the present law we suppose he is subject to at least one other restriction in his sales as to persons. He cannot now sell his beer for medical purposes, except to druggists. It would seem, however, that with a permit he may now sell his beer for scientific and mechanical purposes to any and every person who might wish to purchase the same, and therefore it would seem that in this respect no additional restrictions over the
26 old law are imposed. We think it will now appear that the old law and the new are not so vastly different, as has been by some person supposed. Both are restrictive in their character; both are criminal laws, and both are prohibitory to some extent, and yet neither is absolutely and unqualifiedly a prohibition statute. Both restrict sales as to times, places, and persons, and the present law as to purposes, and yet both laws allow sales to be made. Under the old law the defendant never had any authority to sell his beer, except with a license. He never had any positive assurance that a license would be granted to him, or, if granted, that it would be extended or renewed; and even with a license he could not sell his beer at any other place than at the city of Salina. And this right to sell beer for any considerable period of time was always based upon many uncertainties and contingencies. Under the present law the defendant, with a permit, which he can easily obtain, can manufacture all the beer for medical, scientific, and mechanical purposes, which he chooses to manufacture, and can sell the same for such purposes, provided he can find purchasers therefor. The material restrictions imposed by the present law, in addition to those imposed by the old law, are simply as to the purposes for which he may sell, and as to the persons to whom he may sell, for medical purposes. There are no other material or substantial restrictions.

Under such circumstances we hardly think that the defendant had such a vested interest in the law, or in anything else, as would prevent the passage of a law like our present prohibition act. It would hardly seem that the defendant, by erecting a brewery in 1877, and by operating it for some time afterward, could obtain such a vested interest in anything as to prevent further legislation with respect to intoxicating liquors, of a more restrictive and stringent character, or that he could go on, with or without legislation, and
27 with or without a license, manufacturing and selling beer forever. We suppose that the defendant founds his right to continue to manufacture and sell beer solely and exclusively upon his supposed vested right to operate his brewery in undisturbed tranquility forever. He certainly will not claim that, independent of his brewery, he had a vested right, at the time the constitutional amendment was

adopted, or at the time the present prohibition law was enacted, to either manufacture or sell any kind of intoxicating liquor which had not yet been brought into existence. His whole claim we suppose springs from the rights which his brewery is supposed to have conferred upon him, but these rights we think cannot have such far-reaching consequences as the defendant claims. The beer which the defendant is prosecuted for manufacturing was not in existence at the time when the constitutional amendment was adopted, or at the time when the prohibition act went into operation, but it was manufactured since, and hence, independent of the defendant's interest in his brewery, he could not have had any possible vested right, at the time of the adoption and passage of the present prohibition laws, in the manufacture of such beer. Nearly the same may be said with respect to the beer which the defendant is prosecuted for selling. Presumably, it was not in existence at the time when the constitutional amendment was adopted. Besides, the sale of such kinds of liquor, when made as this sale was made, would have been a violation of the laws of Kansas, and a criminal offense, at any time for the last twenty-three years. In this respect the present law is not new. The sale in the present case was made without a permit or a license. It may be that the defendant has suffered great loss on account of the passage of the prohibition act, but such loss is not the direct
28 and immediate result of such act; it is simply the remote and consequential result of the act, and is wholly speculative and problematical. Such indirect and remote losses cannot render acts of the Legislature unconstitutional. The Beer Co. *v.* Massachusetts, 97 U. S., 25; Bartemeyer *v.* Iowa, 85 U. S., (18 Wall.), 129.

It is frequently the case that the passage of statutes indirectly affect the values of property, as this act does, and still we do not think that such statutes are ever declared to be unconstitutional merely for such reasons. We think that the present prohibition act of Kansas is constitutional, so far as it affects the defendant, and so far as it has any application to the two cases now under consideration. We do not think that the court below committed any error in either of these two cases; but even if it did with respect to the motions of the defendant, which it overruled, the errors were wholly immaterial. In the first case, the defendant was tried upon an agreed statement of facts simply for manufacturing intoxicating liquors contrary to law. In the second case, he was tried upon an agreed statement of facts, upon the first count only of the indictment, and merely for selling intoxicating liquor contrary to law, and for one sale only; and in both cases we think the judgment of the court below was correct, and it will therefore be affirmed.

Horton, C. J., concurring.

BREWER, J.:

I concur fully in the foregoing opinion, so far as it relates to the charge of selling beer, and I think the reasoning of my Brother Valentine thereon is unanswerable. But as to the case in which the charge is of manufacturing beer, and without regard to the pur-

pose for which it was manufactured, while I do not care to formally dissent, I must say that my judgment is not satisfied. The defendant may have manufactured the beer for his own consumption; it certainly is not shown or alleged that he did not, and in a
29 criminal proceeding it is not to be presumed that defendant has done wrong; and I have yet to be convinced that the Legislature has the power to prescribe what a citizen shall eat or drink, or what medicines he shall take, or prevent him from growing or manufacturing that which his judgment approves for his own use as food, drink, or medicine.

Further, prior to the constitutional amendment the manufacture of beer was free and unrestricted; no license, permit, or condition was required. Under that state of the law this defendant invested his means in building and machinery, suitable for the purpose of manufacturing beer, and unsuitable for any other purpose, worth $10,000 for the former use and not to exceed $2,500 otherwise. The denial of the use has thus practically deprived him of $7,500. Is not this taking private property for public use without any compensation? If the public good requires the destruction of the value of this property, is not prior compensation indispensable?

A true copy.

[SEAL.] Attest: C. J. BROWN,
Clerk Supreme Court.

30 THE STATE OF KANSAS, } ss:
Supreme Court, }

I, C. J. Brown, clerk of the supreme court of the State of Kansas, do hereby certify that the above and foregoing is a true and complete copy of the pleadings, of the record of proceedings had, of the judgment rendered, of the syllabus and opinion filed in the above-entitled cause, together with the original petition for the writ of error, the writ of error, the citation and acknowledgment of service thereon, and appeal bond, as the same remain of record and on file in my office.

In witness whereof, I have hereunto subscribed my name and affixed the seal of the supreme court of the State of Kansas, at my office, in Topeka, Kansas, this eleventh day of April, A. D. 1883.

[SEAL.] C. J. BROWN,
Clerk of the Supreme Court of the State of Kansas.

Endorsed on cover: Kansas supreme court. No. 790. Peter Mugler, plaintiff in error, *vs.* The State of Kansas. Filed 16th November, 1883.